A.F.R. (85)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Second Appeal No.155 of 2003

APPELLANT/: (Defendant) — Vijay Navrangkar

- Versus -

RESPONDENT: (Plaintiff) — Smt. Tijia Bai

POST FOR ORDER ON 10TH *MARCH, 2004*

Sd/-
L.C. Bhadoo
Judge

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Second Appeal No.155 of 2003

APPELLANT/: (Defendant)
Vijay Navrangkar,
S/o Mohandas Navrangkar,
Aged about 65 years,
Retired B.S.P. Employee,
R/o Near Ayoddhyavasi
Dharamshala, Polsaipara, Durg,
P.O. & Distt. Durg (C.G.)

- Versus -

RESPONDENT: (Plaintiff)
Smt. Tijia Bai,
Aged about 48 years,
W/o Rahdeshyam Sahu,
Polsaipara,
Ayoddhyavasi Dharamshala, Durg,
P.O. & Distt. Durg (C.G.)

Present: -

Mr. B.R. Ghosh, Advocate: For the appellant.

Mr. Dhirendra Mishra, Advocate: For the respondent.

Before: Hon'ble Mr. Justice L.C. Bhadoo

J U D G M E N T

(Delivered on 10th March, 2004)

1. Appellant Vijay Navrangkar has preferred this second appeal being aggrieved by the judgment and decree dated 07.02.2003 passed by the 8th Additional District & Sessions Judge (Fast Track Court), Durg, in First Appeal No.4-A/2002 dismissing the appeal filed against the judgment and decree passed by the Civil Judge, Class-II, Durg, on 28.06.2000 in Civil Suit No.50-A/1997.

2. I have heard the learned counsel for the parties on the question of admission of this second appeal in order to ascertain as to whether the appellant has been able to raise any substantial question of law in order to admit this appeal.

3. Brief facts giving rise to filing of this second appeal are that Hemant Kumar Sahu, son of Smt. Tijia Bai, the respondent herein, filed a suit for recovery

of arrears of rent, eviction and possession of residential premises, mentioned in para 3 of the plaint, under the provisions of Section 12 of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as 'the Act'), on the ground that the disputed premises were purchased by Hemant from the original owner namely, Bikhuram through a registered sale deed dated 13.09.1996 in consideration of Rs.66,700/- and the present appellant was tenant in a portion of that house at rate of Rs.100/- per month. Therefore, on 6th of October, 1997, a registered notice was sent to the appellant, which was received by him on 07.10.1997, asking him to pay the rent from September, 1996 at the rate of Rs.100/- per month, as he has committed default in payment of rent as per the provisions of Section 12 (1) (a) of the Act. Hemant Kumar Sahu also sought the eviction on the ground of personal necessity. As per the provisions of clause (e) of sub-section (1) of Section 12 of the Act, he also sought the eviction on the ground that the appellant has acquired vacant possession of a suitable house for his residence as per the provisions of clause (i) of sub-section (1) of Section 12 of the Act and further on the ground of substantial damages to the accommodation and nuisance.

4. Written statement was filed by the appellant herein stating that he is not the tenant of Hemant Kumar Sahu, he took the disputed premises 40 years back from one Vijayram, after his death his son Bikhuram Baghel used to collect the rent and he used to pay Rs.20/- per month to Bikhuram. He also denied the other grounds of eviction. During the pendency of that suit, Hemant Kumar Sahu died, therefore, his mother, the respondent herein, was brought on record as his legal heir. After recording the evidence of the parties, the learned Civil Judge decided that the appellant herein is the tenant of the respondent at the rate of Rs.100/- per month, the appellant has committed default in payment of rent, and has acquired a suitable residential accommodation. However, the issues of personal necessities of Hemant Kumar Sahu became redundant as he died during the pendency of the suit. At the same time, the learned Civil Judge, reached the conclusion that the respondent herein was not able to prove the issues of substantial damages to the rented premises and that the appellant herein has constructed a hut in the rented premises. Ultimately, the Civil Judge decreed the suit of eviction as well as the arrears of rent with effect from 13.09.1996 and he further decreed that the plaintiff will be entitled to

receive 6% interest on the arrears of rent till the deposit of the rent. The appellant was further directed to vacate the premises within two months.

5. Aggrieved by this judgment and decree passed by the Civil Judge, the appellant herein filed regular appeal No.4-A/2002 in the Court of the District Judge from where the learned 8th Additional District & Sessions Judge received the appeal on transfer and after hearing the counsel for the parties, the learned first appellate Court affirmed the judgment and decree of the trial Court without any modification.

6. Now, the learned counsel for the appellant tried to raise the following substantial questions of law for entertaining this appeal. First of all, he argued that the appellant herein had already deposited all the rent, therefore, the judgment of the appellate Court is not correct on the ground of default. In this connection, relevant provisions are Sections 12 (1) (a), (3), 13 (1), (2), (3), (4), (5) and (6) of the Act.

> "**12. Restriction on eviction of tenants.**----(1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:
>
> (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner;
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> (3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by Section 13 :
>
> Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any accommodation, he again makes a default in the payment of rent of that accommodation for three consecutive months.
>
> **13. When tenant can get benefit of protection against eviction.**----(1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in Section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this

behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at the rate till the decision of the suit, appeal or proceeding, as the case may be.

(2) If in any suit or proceeding referred to in sub-section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-Section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage.

(3) If, in any proceeding referred to in sub-Section (1), there is any dispute as to the person or persons to whom the rent is payable, the Court may direct the tenant to deposit with the Court the amount payable by him under sub-Section (1) or sub-Section (2), and in such a case, no person shall be entitled to withdraw the amount in deposit until the Court decides the dispute and makes an order for payment of the same.

(4) If the Court is satisfied that any dispute referred to in sub-Section (3) has been raised by a tenant for reasons which are false or frivolous, the Court may order the defence against eviction to be struck out and proceed with the hearing of the suit.

(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-Section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) If a tenant fails to deposit or pay any amount as required by this Section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit, appeal or proceeding, as the case may be."

7. A cursory reading of clause (a) of Sub-section (1) of Section 12 of the Act makes it clear that non-payment of arrears of rent legally recoverable from a tenant within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner, is one of the grounds for filing a suit in a Civil Court against a

tenant for his eviction from the rented accommodation. But the legislative mandate contained in Sub-section (3) of Section 12 is that no order of eviction of a tenant shall be made if he makes payment or deposit as required by Section 13 of the Act. The proviso appended to Section 12 (3) restricts entitlement to the benefit available under that Sub-section. It cannot be availed by a tenant who having obtained such benefit once in respect of any accommodation again makes a default in payment of rent of that accommodation for three consecutive months.

8. In this connection, the following observations of the Hon'ble Apex Court in the matter of **Jamnalal and others vs. Radheshyam** reported in **2000 (2) J.L.J. 1**, are relevant: -

> "Sub-section (2) of Section 13 of the Act takes care of the situation when there is dispute as to the amount of rent payable by the tenant and directs fixation of a reasonable provisional rent, in relation to the accommodation which will be a summary inquiry by the Court. The dispute may arise in any of the following circumstances :
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> (i) rate of rent and the quantum of arrears of the rent are in dispute though not the period for which arrears of rent are due.
> (ii) rate of rent and the quantum of arrears of rent are in dispute and also the period for which it is due.
> (iii) rate of rent is admitted but the quantum of arrears of rents or/and the period for which it is due are disputed.
>
> A careful reading of the Sub-section shows that the Court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of Sub-section (1) if there is a dispute as to the amount of rent payable by the tenant. The clause 'the Court shall' fix a reasonable provisional rent in relation to the accommodation clearly indicates that 'any dispute as to the amount of rent' is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the dispute as to the amount of rent payable by the tenant has no nexus with the rate of rent, the determination of such dispute in a summary inquiry is not contemplated under Sub-section (2) of Section 13. Such a dispute has to be resolved after trial of the case. Consequently, it is only when the obligations imposed in Section 13 (1) cannot be complied with without resolving the dispute under Sub-section (2) of that Section, that Section 13 (1) will become inoperative till such time the dispute is resolved by the Court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of

Section 13 (1) becomes inoperative till provisional fixation of monthly rent by the Court under Sub-section (2) of Section 13, which will govern compliance of Section 13 (1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), Sub-section (2) of Section 13 is not attracted as determination of such a dispute is not postulated there under. Therefore, the obligation to pay/deposit the rent for the second and the third period aforementioned, referred to in Section 13 (1), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/proceedings will be pending that is (future rent) does not become inoperative for the simple reason that Section 13 (2) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of the category of dispute does not fall under Section 13 (2) the tenant has to take the consequence of non-payment/deposit of rents for the said periods. If he fails in his plea that no arrears are due and the Court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.

Where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/ deposited either because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the Court. In such a case Sub-section (2) is not attracted because the plea taken by the tenant has to be adjudicated by full-fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under Sub-section (1) because where the dispute raised by the tenant is outside the ambit of Sub-section (2), Sub-section (1) of Section 13 of the Act does not become operative.

There can be no debate on the proposition that the tenant is relieved of the consequences of default in payment of rent on his paying/depositing the rent under Sub-section (1) at the rate last paid or at the rate fixed provisionally under Sub-section (2) of Section 13 of the Act but if the tenant takes a false or frivolous plea in regard to the amount of rent payable by him, which does not involve fixation of provisional rent under Section 13 (2), he runs the risk of suffering an order of eviction either under Sub-section (6) of Section 13 or after trial under Section 12 (1) (a) of the Act."

(Emphasis supplied)

(42)

9. In view of the above proposition laid down by the Hon'ble Apex Court, if we look into the facts of the present case, the landlord respondent claimed the rent from 13.09.1996 as the same was said to be not paid by the appellant herein. Similarly, the rate of rent of the disputed premises was claimed as Rs.100/- per month by the landlord, whereas, the appellant tenant said that he used to pay the rent to Bikhuram, the previous landlord, at the rate of Rs.20/- per month and he paid the rent up to the month of September, 1997 to him and thereafter, also he paid the rent to Bikhurm through Money Order. The appellant also disputed the rate of rent of Rs.100/- per month. As per the provisions of Sub-section (2) of Section 13 of the Act and in view of the above judgment of the Hon'ble Apex Court, the Court was required to fix a reasonable provisional rate of rent that too on a plea made either by the landlord or by the tenant in that behalf and the Court was not required to fix a provisional rent in respect of the period for which the tenant claimed that he had already paid the rent, as that was to be determined only after full trial of the suit. As in the present case, there was no request made either by the landlord or by the tenant for fixing of the reasonable provisional rent, the Court did not fix the provisional rent. Even otherwise, since there was a dispute regarding the period for which the amount to be paid because the landlord claimed that rent was due since September, 1996, whereas, the appellant tenant pleaded that the rent was already paid up to the month of September, 1997 to the previous landlord, therefore, Sub-sections (1) & (2) of Section 13 of the Act became inoperative till the dispute was decided by the Court after the full trial. After recording the evidence of the parties and hearing the parties, the learned trial Court reached the conclusion that the rate of rent of the disputed premises was Rs.100/- per month. The Court further reached the conclusion that the plaintiff was entitled for rent at the rate of Rs.100/- per month from 13.09.1996 and the plea of the appellant tenant was not accepted that he had already paid the rent for the disputed premises up to the month of September, 1997. Therefore, as per the provisions of Sub-section (1) of Section 13 of the Act, the appellant herein was required to deposit the arrears of rent within one month from the date of filing of the appeal by him or within such further time as the Court may on an application made to it allow in this behalf.

10. Learned counsel for the appellant was not able to show that the arrears of rent were deposited by the appellant within the prescribed period under

Sub-section (1) of Section 13 of the Act. Learned counsel was not able to show that during the pendency of this appeal before the first appellate Court, even the future rent was deposited month by month as per the provisions of Sub-section (1) of Section 13 of the Act. Therefore, the appellant has been rightly held as defaulter in payment of rent and liable for eviction as per the provisions of clause (a) of sub-section (1) of Section12 of the Act. In the circumstances, I do not find any substance in the argument of the learned counsel for the appellant that the appellant had not committed any default and the trial Court and the appellate Court were not right in holding the appellant as defaulter and liable for eviction as per the provisions of clause (a) of sub-section (1) of Section 12 of the Act. Findings of the trial Court as well as the appellate Court are based on the legal evidence and as per the provisions of Sections 12 (1) (a), 13 (1) & (6) of the Act.

11. The second question raised by the learned counsel for the appellant is that the house in question which is said to be acquired by the appellant was purchased in the name of his wife and as per the provisions of Section 14 of the Hindu Succession Act, she is the absolute owner of that house, and moreover, the house was purchased by the appellant in the name of his wife, therefore, that is hit by the provisions of the Benami Transactions (Prohibition) Act, as such it cannot be held that the appellant had acquired vacant possession of accommodation suitable for his residence and therefore, the findings of the trial Court as well as the first appellate Court are perverse. I do no find any substance in this argument of the learned counsel because clause (i) of sub-section (1) of Section 12 of the Act envisages "that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or, been allotted an accommodation suitable for his residence". Therefore, in order to attract the provisions of clause (i) of sub-section (1) of Section 12 of the Act, the Court is required to see as to whether the appellant had acquired vacant possession of an accommodation suitable for his residence. It makes no difference whether the said accommodation is in his name or is a benami transaction. So long there is evidence that the wife of the appellant and the appellant are residing together in the accommodation which was acquired for residence in the name of his wife, that can be considered to be acquired by the appellant also in terms of clause (i) of sub-section (1) of Section 12 of the Act and for that purpose the Court is not required to go into the

question whether it is a benami transaction or not, or that accommodation stands in whose name. The simple requirement of clause (i) of sub-section (1) of Section 12 of the Act is that whether the tenant has acquired vacant possession of an accommodation suitable for his residence.

12. In the light of the above proposition, if we look into the present case, it is admitted position that the house was purchased in the name of the wife of the appellant tenant and there is evidence that both the appellant and his wife are residing together in that house. It has not been established that there is any dispute between the husband and wife and they are residing separately, therefore, that house can be considered to be the accommodation suitable for the residence of the appellant in terms of clause (i) of sub-section (1) of Section 12 of the Act. If we look into the preamble and object of the Act, the same has been enacted for giving protection to tenants belonging to weaker sections of the society, incapable of building their own houses and to ensure protection of the tenants against their unlawful eviction from the rented premises by the landlords without reasonable cause or just to harass the tenants for increasing the rent or otherwise, unless any one requirement of sub-section (1) of Section 12 of the Act is satisfied. At the same time, it is also the duty of the Court to see and ensure that if the landlord is entitled for an eviction decree on any of the grounds mentioned in sub-section (1) of Section 12 of the Act and the landlord has been able to prove any ground of eviction, then the Court should not hesitate in passing the eviction decree against the tenant and the tenant should not be allowed to take refuse of provisions of Section 12 (1) of the Act on technical grounds without any justification. As has been held by the trial Court and the first appellate Court that the appellant has acquired vacant possession of an accommodation suitable for his residence in the name of his wife which is existing nearby the disputed house and even the appellant and his wife had shifted to that house and the appellant is running a shop in that house also, therefore, the conditions of clause (i) of sub-section (1) of Section 12 of the Act are satisfied. I do not find any perversity or illegality in the finding of the trial Court and the first appellate Court in reaching the conclusion that the landlord is entitled for any decree of eviction on the ground of acquiring an accommodation suitable for the residence in terms of clause (i) of sub-section (1) of Section 12 of the Act. On this ground also, learned counsel for the appellant has not been able to raise any substantial question of law.

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13. In the result, the appeal of the appellant is devoid of any merit and no substantial question of law is involved in this matter. Therefore, the appeal is liable to be dismissed and the same is dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Soma